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No. 04-301

IN THE

Supreme Court of the United States

OFFICE OF THE COMMISSIONER OF MAJOR LEAGUE BASEBALL; AMERICAN LEAGUE OF PROFESSIONAL BASEBALL CLUBS; NATIONAL LEAGUE OF PROFESSIONAL BASEBALL CLUBS,

Petitioners,

v.

THE MAJOR LEAGUE UMPIRES ASSOCIATION; WORLD UMPIRES ASSOCIATION,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

BRIEF IN OPPOSITION FOR RESPONDENT MAJOR LEAGUE UMPIRES ASSOCIATION

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RULE 29.6 DISCLOSURE STATEMENT

The Respondent, the Major League Umpires Associations, has no parent and no publicly held company owns 10% or more of its stock.

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REASONS FOR DENYING THE PETITION

Those portions of the arbitrator's decision at issue on this appeal awarded reinstatement and back pay to National League umpires-Terry Tata, Frank Pulli, Joe West, Larry Vanover, Larry Poncino, and Gary Darling. The lower court ruling at issue herein affirmed the arbitrator on those awards. The stated basis in the award for sustaining the grievance was the application of the skill and merit criteria mandated by Article VIII.A of the collective bargaining agreement. The arbitrator also denied the grievance as to three junior National League umpires Paul Nauert, Bruce Dreckman and Sam Holbrook. The lower court reversed the arbitrator as to those three junior National League umpires and ordered them reinstated with back pay. All of the aforementioned, umpires, however, have since returned to their positions in baseball. The three junior umpires, Nauert, Dreckman and Holbrook have in fact completely settled their grievance and their claims are not, in any way, before this Court. The third circuit of course affirmed the lower court. The point is, the only decision before this Court is the arbitrator's decision sustaining the grievance and the lower court's ruling affirming the award. The standard of review therefore is one regarding the affirmance of an arbitrator's decision.

Reversing a lower court's decision that affirms a labor arbitration award is among the rarest forms of relief known to the law. The labor arbitration award should be affirmed unless the court can say, without any doubt, that the award is so implausible that it must have been based on feelings or thoughts that are not only outside of the express terms of the contract but are outside of the terms, provisions and law incorporated or implied in to the contract. Further, when the issue is arbitrability, and the contract contains a broad

arbitration clause, as the contract in this case does, there is an added strong judicial presumption in favor of arbitrability.

The arbitration clause in this case made any "claimed violation" of the agreement arbitrable. App., p. 84a. The arbitrator on more than one occasion rejected the Petitioners' challenges to arbitration and ruled that the dispute concerned "claimed violations" of the agreement. Those rulings alone foreclose any attempt to vacate the award. In addition, however, the award, to the extent that it is before this Court, was expressly based on the application of the contractual skill and merit provision which the National League 1) advised the union that it intended to use; 2) actually purported to use; and 3) advised the terminated umpires that it actually did use. This case was clearly arbitrable but if there is any legitimate argument that it was not (which, in light of the arbitrator's express reliance on the contract, is hard to imagine), the argument does not rise to the level of implausibility that could lead a reviewing court to conclude that the arbitrator must have based his award on a "feeling" that was outside the contract. Certiorari should be denied.

I. IN AFFIRMING THE AWARD, THE THIRD CIRCUIT DID NOT CREATE A SPLIT WITH OTHER CIRCUITS OVER THE STANDARD OF REVIEW OF A LABOR ARBITRATION AWARD

A. THE THIRD CIRCUIT DID NOT ENGAGE IN DE NOVO REVIEW OF THE COLLECTIVE BARGAINING AGREEMENT WHEN IT AFFIRMED THE LOWER COURT'S RULING AFFIRMING THE AWARD

The Petitioners' argue first that the third circuit engaged in what they call "de novo" review of the agreement and hence failed in its obligation to adhere to the "draws its essence" test. In other words, the Petitioners complain that the third circuit agreed with the arbitrator's result but for different reasons. The Petition for Certiorari, p.10.

The issue over which the Petitioners allege that the third circuit engaged in "de novo" review is arbitrability. The Petitioners assert that the third circuit erred when it concluded that the dispute was arbitrable under the broad arbitration provision of Article XV.A. *See*, the Petition, p. 11. The arbitration provision in the contract provides that:

> In the event of a claimed violation of the provisions of this Agreement . . . the matter shall be referred to an arbitrator. . . .

Where, as here, the arbitration clause is broadly worded, the presumption is in favor of arbitrability. *E.g.*, *Steelworkers v. Warrior & Gulf Nav. Co.*, 363 U.S. 574, 582-583 (1960).

On November 26, 1999 the arbitrator denied the Petitioners' motion to dismiss based on arbitrability. App., p. 172a. The very same arguments that the Petitioners complain that the third circuit ignored in affirming the arbitrator's award, the arbitrator himself actually rejected over five years ago. In denying the Petitioners' motion to dismiss, the arbitrator found that the dispute involved a "claimed violation" of at least Article VIII.A. The arbitrator found that whether the League Presidents, in terminating umpires, or accepting resignations properly applied the skill and merit criteria set forth in Article VIII.A., and whether they acted in a discriminatory or recriminatory manner, was arbitrable. App., p. 172a. The third circuit did not engage in "de novo" review. The third circuit simply found that the arbitrator's ruling was correct and there was no basis for vacating the arbitrator's ruling on arbitrability. Appendix, p. 19a.

Judicial review of arbitration awards is not only more narrow than the review of decisions from lower courts, it is among the most narrow known to law. *Gupta v. Cisco Systems*, 274 F.3d 1, 3 (1st Cir. 2001); *Coastal Oil of New England, Inc. v. Teamsters Local*, 134 F.3d 466, 468 (1st Cir. 1998). Recently, in unequivocal terms, this Court reiterated in *Major League Baseball Player's Association v. Garvey*, 532 U.S. 504, 509-510 (2001) (citations omitted), the limited scope of the judicial review of labor arbitration awards:

> Judicial review of a labor-arbitration decision pursuant to such an agreement is very limited. Courts are not authorized to review the arbitrator's decision on the merits despite allegations that the decision rests on factual errors or misinterprets the parties' agreement. . . . We recently reiterated

> that if an "'arbitrator is even arguably construing or applying the contract and acting within the scope of his authority,' the fact that 'a court is convinced he committed serious errors does not suffice to overturn his decision.'" . . . It is only when the arbitrator strays from interpretation and application of the agreement and effectively "dispense[s] his own brand of industrial justice" that his decision may be unenforceable. . . . When an arbitrator resolves disputes regarding the application of a contract, and no dishonesty is alleged, the arbitrator's "improvident, even silly, factfinding" does not provide a basis for a reviewing court to refuse to enforce the award.

More importantly, however, while the question of arbitrability – whether the parties' contracted to arbitrate a particular grievance – is usually a legal issue for judicial determination, *AT&T Technologies, Inc. v. CWA*, 475 U.S. 643, 649 (1986), in this case, since the parties agreed to submit the issue of arbitrability to the arbitrator, the lower court was obliged to give the arbitrator's decision regarding arbitrability the same deference due an arbitrator's decision on the merits. *United Industrial Workers v. Government of the Virgin Islands*, 987 F.2d 162, 167-168 (3d Cir. 1993). In other words, all that was required of the third circuit was an analysis of whether arbitrability could rationally be derived from the agreement.

The agreement contained a broad arbitration clause. The clause made any "claimed violation" of the agreement arbitrable. The arbitrator expressly found that the grievance concerned a "claimed violation" of the agreement. That finding is indeed correct. It can, at the very least, be said to

be a plausible interpretation of the agreement. The award and the lower court's ruling both should have been affirmed.

The Petitioners, under the guise of the "draws its essence" test, are really asking this Court to, in effect, to vacate the award. The reason proffered by the Petitioners for asking for one of the rarest forms of judicial relief known in the law, is because, the Petitioners argue, the arbitrator arrived at the result of his decision by the wrong reasoning.

The argument that the Petitioners make suggests that the arbitrator concluded that since the umpires "resigned"[1] they were no longer entitled to the benefit of any provisions of the Collective Bargaining Agreement. From this, the Petitioners suggest that the arbitrator should have found that the grievance was not arbitrable.

There is no inconsistency between the arbitrator's reasoning and the result at issue on this appeal. More importantly, even if one were to assume, *arguendo*, that the arbitrator's reasoning did not support the result, the result is not only a plausible result based on the language of the collective bargaining agreement; indeed it is the correct result. Under those circumstances, the arbitrator's award and the lower court's ruling should be affirmed irrespective of any alleged error in the reasoning. To do otherwise, as the Petitioners' request, would be to turn the law regarding the review of arbitration awards on its head and to open up the proverbial "floodgates of litigation" over the soundness of arbitral reasoning.

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1. This finding was based solely on the fact that the umpires wrote prospective resignation letters.

It is universally recognized among the first, third, fourth, fifth, seventh and ninth circuits that the reasoning employed by the arbitrator to reach his or her conclusion is not relevant to the reviewing court. *Apex Plumbing & Supply, Inc. v. U.S. Supply, Inc.*, 142 F.3d 188, 193 (4th Cir. 1998), *cert. den.*, 525 U.S. 876 (1998); *Anderman Smith Operating, Inc. v. Tennessee Gas Pipeline Co.*, 918 F.2d 1215, 1219, n.3 (5th Cir. 1991), *cert. den.*, 501 U.S. 1206 (1991); *Ludwig Honold Manufacturing Co. v. Fletcher*, 405 F.2d 1123, 1132 (3rd Cir. 1969); *Chicago Web Printing Pressman's Union No. 7 v. Chicago Newspaper Publishers Assoc.*, 772 F.2d 384, 386 (7th Cir. 1985); *United Steelworkers of America v. United States Gypsum Co.*, 492 F.2d 713, 733 (5th Cir. 1974), *cert. den.*, 419 U.S. 998 (1974). Indeed, it is the award rather than the conclusion or the reasoning employed that a court reviews. *Schlessinger v. Builder Service Employees International Union Local 252*, 367 F. Supp. 760, 764 (E.D. Pa. 1973). A court should uphold an award that depends on an arbitrator's interpretation of the collective bargaining agreement if it can find, within the four corners of the agreement, any plausible basis for the interpretation. *Coastal Oil of New England, Inc. v. Teamsters Local*, 134 F.3d 466, 469 (1st Cir. 1998). Stated another way, the award should be sustained where the record discloses a permissible route to the stated conclusion. *Sergeant v. Paine Webber Jackson & Curtis, Inc.*, 882 F.2d 529, 532 (D.C. Cir. 1989), *cert. den.*, 494 U.S. 1028 (1990); *see also Local 59, Int'l Brotherhood of Electrical Workers v. Green Corp.*, 725 F.2d 264, 268 (5th Cir.), *cert. den.*, 469 U.S. 833 (1984), *cert. den.*, 469 U.S. 833 (1984).

The reluctance of the circuit courts to involve themselves in the exercise of resolving quibbles over nuances in an arbitrator's reasoning is in keeping with sound judicial

practice, and the precedent of this Court. For it is settled precedent in this Court that, in reviewing the decision of a lower court, the decision must be affirmed if the result is correct even where the lower court relied upon a wrong ground or gave a wrong reason. *See, e.g., Rutan v. Republican Party of Ill.*, 497 U.S. 62, 76, 110 S. Ct. 2729, 2737-2738, 111 L. Ed. 2d 52 (1990) ("[A]lthough we affirm the Seventh Circuit's judgment . . . we do not adopt the Seventh Circuit's reasoning"); *Smith v. Phillips*, 455 U.S. 209, 215, n.6, 102 S. Ct. 940, 945, n.6, 71 L. Ed. 2d 78 (1982) ("Respondent may, of course, defend the judgment below on any ground which the law and the record permit, provided the asserted ground would not expand the relief which has been granted"); *SEC v. Chenery Corp.*, 318 U.S. 80, 88, 63 S. Ct. 454, 459, 87 L. Ed. 626 (1943) ("[W]e do not disturb the settled rule that, in reviewing the decision of a lower court, it must be affirmed if the result is correct 'although the lower court relied upon a wrong ground or gave a wrong reason'") (quoting *Helvering v. Gowran*, 302 U.S. 238, 245, 58 S. Ct. 154, 158, 82 L. Ed. 224 (1937)); *Langnes v. Green*, 282 U.S. 531, 536-537, 51 S. Ct. 243, 245-246, 75 L. Ed. 520 (1937) ("[T]he entire record is before this court with power to review the action of the court of appeals and direct such disposition of the case as that court might have done upon the writ of error sued out for the review of the [district] court"); *Williams v. Norris*, 12 Wheat. 117, 120, 6 L. Ed. 571 (1827) (Marshall, C.J.) ("If the judgment [of the lower court] should be correct, although the reasoning, by which the mind of the Judge was conducted to it, should be deemed unsound, that judgment would certainly be affirmed in [this] Court"). Further, this Court has stated "Arbitrators have no obligations to the court to give their reasons for an award." *Steelworkers v. Enterprise Wheel & Car Corp.*, 363 U.S. 593, 598, 80 S. Ct. 1358, 1361, 4 L. Ed. 2d 1424 (1960). (Footnote omitted). Requiring

explanations simply undermines the speed and thrift that parties seek from arbitration in the first instance. *Sergeant v. Paine Webber Jackson & Curtis, Inc.*, 882 F.2d 529, 532 (D.C. Cir. 1989) (quoting *Moses H. Cone Memorial Home v. Mercury Construction Corp.*, 460 U.S. 1, 24 (1983)).

The reasoning of a lower court's decision thus can have little or nothing to do with whether the decision can be affirmed. The scope of review in regards to an appeal from an arbitrator's award is substantially more narrow than the scope of review of a lower court's decision. If an arbitrator is not required to provide any opinion or reasoning at all, it naturally follows that the award can be affirmed regardless of the arbitrator's reasoning. If the precedent of this Court requires the appellate courts to affirm regardless of a lower court's reasoning and the scope of review of an arbitration award is far more deferential than the scope of review of a lower court ruling, it naturally follows that the arbitration award may also be affirmed regardless of the arbitrator's reasoning.

In *General Teamsters Auto Truck Drivers and Helpers Local 162 v. Mitchell Brothers Truck Lines*, 682 F.2d 763, 766 (9th Cir. 1982), the very issue raised by the Petitioners herein, was presented to the ninth circuit. In that case, the court ruled:

> Thus, the Arbitrator is guilty of nothing more than doing the right thing for the wrong reason. "In the review of judicial proceedings the rule is settled that if the decision below is correct, it must be affirmed, although the lower court relied upon a wrong ground or gave a wrong reason." *Helvering v. Gowran*, 302 U.S. 238, 245, 58

> S. Ct. 154, 158, 641 F.2d 1368, 1371 (C.A. 9 1981); *Thos. P. Gonzalez Corp. v. Consejo Nacional, Etc.*, 614 F.2d 1247, 1256 (C.A. 9 1980). We see no reason to depart from this rule in the present context.

The Petitioners claim that a reviewing court has no choice but to vacate an award if the reasoning does not support the result. The Petitioners suggest that this Court's decision in the *Enterprise Wheel* case is authority for such a proposition. The Petitioners misread *Enterprise Wheel*.

In the *Enterprise Wheel* case, the arbitrator's opinion in question could be read as basing the result solely on legislation, as opposed to the parties agreement. Like these Petitioners, the appellant argued that, based on the arbitrator's stated reasoning, the award did not draw its essence from the agreement. Another possible reading of that award, however, was that the reliance on legislative enactments was simply as a means to help the arbitrator in determining the "sense" of the agreement. Like this award there was no question but that the award, *i.e.*, the result, in *Enterprise Wheel* could be said to have drawn its essence from the agreement. This Court found the decision to be ambiguous at worst and under those circumstances ruled that the award should have been affirmed. In so doing this Court observed:

> A mere ambiguity in the opinion accompanying an award, which permits the inference that the arbitrator may have exceeded his authority, is not a reason for refusing to enforce the award. Arbitrators have no obligation to the court to give their reasons for an award. To require opinions free of ambiguity may lead arbitrators to play it

> safe by writing no supporting opinions. This would be undesirable for a well-reasoned opinion tends to engender confidence in the integrity of the process and aids in clarifying he underlying agreement. Moreover, we see no reason to assume that this arbitrator has abused the trust the parties confided in him and has not stayed within the areas marked out for his consideration. It is not apparent that he went beyond the submission.

Enterprise Wheel, supra, at p. 598.

The challenged result in this case is arbitrability. The agreement contains a broad arbitration clause making any "claimed violation" arbitrable. The arbitrator found that the application of the Article VIII.A. criteria to the terminations or resignations was a "claimed violation". This result is definitely one that is plausible based on the terms of the agreement in question. The arbitrability issue, therefore, was properly affirmed by the lower court and by the third circuit and there was no impermissible, "de novo", review of the agreement.

B. THE STANDARD APPLIED BY THE THIRD CIRCUIT IN THIS CASE IN AFFIRMING THE LOWER COURT'S RULING AFFIRMING THE AWARD DID NOT DIFFER FROM THE STANDARDS APPLIED BY OTHER CIRCUITS

The Petitioners complain that the standard applied by the third circuit amounted to a "fundamental departure" from the "draws its essence" test. That complaint is unfounded. The standard applied by the third circuit herein was the

"draws its essence" standard, which is the correct standard. App., p. 14a. The Petitioners' real complaint is that the third circuit, based solely on the alleged reasoning accompanying the award, should have vacated the award. As set forth above, however, the decisions of other circuits (first, fourth, fifth, seventh and ninth) are in accord that an arbitrator's reasoning should not be the basis to vacate the award if the award can be said to be based on any plausible interpretation of the agreement.

The Petitioners cite four cases as supposed authority for the proposition that they are advancing. The problem is that not one of those cases refutes or even discusses the principle that reasoning alone is not a basis to vacate an award. None of those cases, therefore, can be said to provide a "standard" from which the third circuit allegedly deviated.

Further, the first case cited by the Petitioners, *Georgia Pacific Corp. v. Local 27, United Paperworkers International Union*, 864 F.2d 940 (1st Cir. 1988), is also factually distinguishable from this case. In the *Georgia Pacific* case, the issue was whether, once an arbitrator finds that an employee commits some act expressly listed in the agreement as being "just cause" for termination, the arbitrator is free to determine that the act does not warrant termination. The *Georgia Pacific* case was decided solely on the basis of clear and unequivocal contract language on the just cause issue. This case, of course, was not decided on "just cause" principles. More importantly, however, there is no plausible argument that this agreement is unequivocal or unambiguous in terms of its support for the Petitioners' complaints. The umpires threatened to resign. There is no contractual language that says that a threat to resign or a prospective resignation letter that results in a discharge or termination is

not subject to the skill and merit criteria of article VIII or that a claim arising therefrom is not arbitrable. Further, the first circuit has, since *Georgia Pacific* expressly acknowledged that since an arbitrator is not even required to state the grounds for the award, a reviewing court may uphold the award on grounds not stated by the arbitrator. *Keebler Company v. Truck Drivers Local No. 170*, 247 F.3d 8, 13 (1st Cir. 2001).

The Petitioners' also rely on *Excel Corp. v. United Food & Commercial Workers International Union, Local 431*, 102 F.3d 1464 (8th Cir. 1996). That case, like the *Georgia Pacific* case, also involved contract language that was clear and unequivocal and did not involve the issue of arbitrability. Further, the language therein was so clear that the award, once rendered amounted, to an amendment of the contract. No one can read the broad arbitration clause in Article XV, or the skill and merit provisions of Article VIII for that matter, and say that this dispute does not at least involve a "claimed violation" of the terms of the agreement.

In *Harry Hoffman Printing, Inc v. Graphic Communications International Union, Local 261*, 950 F.2d 95 (7th Cir. 1991) the dispute involved the replacement of striking workers-not arbitrability. The arbitrator ruled that the replaced workers were entitled to notions of "elementary due process" before being replaced and reinstated them. The court found that there was no basis in contract, contract law or in the other types of extra contractual considerations upon which an arbitrator is entitled to rely (such as the law of the shop, customs or practices). Therefore, the court concluded, the award "must" have been based on a "body of thought, or feeling, or policy or law that is outside the contract and not incorporated in it by reference".

Lastly, the Petitioners rely on *Georgia Power Company v. The International Brotherhood of Electrical Workers*, 995 F.2d 1030 (11th Cir. 1993), *cert. den.*, 511 U.S. 1069 (1994). In that case the arbitrator awarded punitive damages. There were two issues regarding the award, whether an arbitrator has authority to award punitive damages and whether there was **any** support for those damages in the record. The latter question was answered in the negative so the former question was not addressed. The fact is, like the three cases discussed above, the *Georgia Power* case is also not an arbitrability case. The *Georgia Power* case also did not suggest or even address a standard that holds that the award does not "draw its essence" from the contract unless the arbitrator's reasoning is correct. In fact, the *Georgia Power* case turned on the record.

In this case, the record discloses, among other things, 1) a broad arbitration clause making any "claimed violation" of the agreement arbitrable; 2) more than one finding that the dispute involved a "claimed violation" of the agreement; 3) a finding that the decisions regarding which umpires to terminate, or whose resignations to accept was governed by Article VIII.A; 4) a finding that the League Presidents' application of the skill and merit provisions of Article VIII.A was arbitrable (App., p. 172a); and 5) a finding that the "sole question in this case concerns whether the actions taken were appropriate under the terms of the collective bargaining agreement". (App. p. 21a). The award, to the extent that it is before this Court, turned on the application of the skill and merit provisions of article VIII.A to the National League umpires. Unlike the *Georgia Power* case, this is not a case where the record is completely devoid of any findings that could provide a basis for the award.

The Petitioners' cases do not represent a line of authority that is different regarding the standard of review of labor arbitration awards than that applied by the third circuit. Certiorari should therefore be denied.

II. THE THIRD CIRCUIT'S DECISION TO AFFIRM THE LOWER COURT'S RULING TO ENFORCE THAT PORTION OF THE AWARD GRANTING REINSTATEMENT TO CERTAIN NATIONAL LEAGUE UMPIRES DOES NOT REPRESENT A DEPARTURE FROM THE "DRAWS ITS ESSENCE" TEST

Based on the Petitioners' complaints about the arbitrator's reasoning, the Petitioners' contend that the portion of the award reinstating National League umpires should have been vacated. The Petitioners' argue that the award fails the "draws its essence" test because of alleged errors in reasoning. The Petitioners misapply the "draws its essence test".

An award "draws its essence" from an agreement as long as it is based on the arbitrator's interpretation of the agreement – as unsound or wrong as that may be. *See, e.g., F.W. Woolworth Co. v. Miscellaneous Warehousemen's Union, Local No. 781*, 629 F.2d 1204, 1214-16 (7th Cir. 1980), *cert. den.*, 451 U.S. 937 (1981); *Manhattan Coffee Co. v. International Brotherhood of Teamsters, Local No. 688*, 746 F.2d 621, 623-24 (8th Cir. 1984); *Super Tire Engineering Co. v. Teamsters Local Union No. 676*, 721 F.2d 121, 122-24 (3d Cir. 1983), *cert. den.*, 469 U.S. 817 (1984). As the Petitioners' own authorities recognize, the agreement includes not only its express terms but its implied terms, the law of the shop, the parties customs and practices and

principles of contract interpretation such as waiver and estoppel. *Harry Hoffman*, *supra* at pp. 98-99. As also mentioned above, an award fails the "draws its essence" test only when the court can conclude that the award "must" have been based on a feeling or thought that was outside the contract (and what is incorporated in the contract). *E.g.*, *Id.* In the case of doubt, the award should be enforced. *Ethyl Corp. v. United States Steelworkers of America, AFL-CIO-CLC*, 768 F.2d 180, 184 (7th Cir. 1984), *cert. den.*, 475 U.S. 1010 (1986) (relying on *Enterprise Wheel*).

This case presents the classic example of a party arguing not over the result-but over the reasoning. The result here is ironclad. The arbitrator applied the contractual skill and merit criteria of Article VIII.A to find in favor of reinstatement. *E.g.*, App., pp. 157a-159a.

The Petitioners argue rather that, since the arbitrator found that umpires "resigned", the arbitrator should not have applied Article VIII.A. Regardless of whether the arbitrator found that the umpires "resigned", the arbitrator actually applied the contractual skill and merit clause. The arbitrator applied that criteria based on estoppel principles (*see*, App., p. 51a) because, among other things, when faced with numerous rescissions and the intervening hirings, 1) the National League told the union that it intended to apply the skill and merit criteria in order to determine whose rescissions it would reject; 2) the National League in fact did purport to apply those criteria (App., pp. 140a & 157a); and 3) the National League told the terminated umpires that they were terminated because of the application of the skill and merit criteria. The principles of estoppel and waiver are, as the Petitioners very own authorities note, just the sort contract law principles that are incorporated into labor agreements

and that should be considered by arbitrators. *Harry Hoffman, supra* at 98-99 (relying on *GK Management, Inc. v. Local 274, Hotel Employees & Restaurant Employees Union*, 930 F.2d 301, 304 (3d Cir. 1991)). Further, as the Petitioners' own authorities acknowledge, neither an erroneous application of those principles, nor a misinterpretation of the agreement in question, constitutes grounds for vacatur. *Harry Hoffman, Inc., supra* at 99 (relying on *Misco*); and see also, Elkouri & Elkouri, *How Arbitration Works*, p. 400 (4th ed. 1985).

No one could read the arbitrator's opinion, his application of the skill and merit criteria of Article VIII.A in particular, and conclude that the reinstatement of the National League Umpires "must" have been based on a "feeling" that was outside of the contract. The award should be affirmed regardless of whether the reasoning to support how the arbitrator arrived at Article VIII.A was erroneous. In fact, it was not erroneous in this case as a labor arbitration decision based on estoppel is recognized as a legitimate exercise of arbitral authority. Assuming, *arguendo*, that it was inappropriate or wrong to rely on estoppel, the record provides ample support for the application of the Article VIII.A. skill and merit criteria to resignations, terminations, threats to resign, or any other activity which forms the basis of actions by a League to terminate the employment of an umpire. Certiorari, therefore, should be denied.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Supreme Court deny the Petition for a Writ of Certiorari.

Respectfully submitted,

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